

* HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ Writ Petition Nos.17650, 17666, 17668 and 18431 of 2001

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% 01.04.2015

M/s. Satty & Associates

... Petitioner

Vs.

\$ Joint Commissioner (CT)

Enforcement Wing,

Hyderabad

... Respondent

! Counsel for the petitioner: Sri S.R. Ashok, Sr. Counsel for Sri A. Ravinder Reddy

Counsel for the respondent: Spl. G.P., Taxes (Telangana)

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> Head Note:

? Cases referred:

1976 (I) APLJ 48

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Common Order: (Per Justice R. Subhash Reddy)

In view of the common questions of law and facts, these four Writ Petitions are heard together and disposed of by this common order.

2. For the purpose of disposal, we refer to the facts arising in W.P.No.17650 of 2001, which is filed with the following prayer:

“For the reasons stated in the affidavit, it is prayed that the Hon'ble Court may be pleased to issue appropriate writ or order or direction, preferably in the nature of Writ of Prohibition:

- i. interdicting the respondent from proceeding further in pursuance of the show cause notice dt.12.07.2001 issued in CCT's JC(CT)/Enft/CTO/VI/51/1999-2000, HRBT;
- ii. declare the search made by the Enforcement Wing of the Commercial Tax Department of the residential premises of the deponent of the writ petition on 7-8-2000 as illegal and

without jurisdiction and consequently direct the respondents to return the seized books of accounts and other records to the petitioner forthwith and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. Imposition of tax on horseracing and certain forms of betting in connection therewith is governed by the Hyderabad Horse Racing and betting Tax Regulation of 1358 F., (for short “the Regulations” which are framed in the erstwhile Hyderabad State in 1358 Fasli. Though much water has flown under the bridge, still the said Regulations govern collection of tax on horseracing and other forms of betting in connection therewith. Chapter I of the Regulations deal with tax on horse racing and Chapter II deals with taxes on certain forms of betting.

4. Petitioner is a licensed book-maker, as defined under Regulation 12 of the Regulations, in the Hyderabad Race Course. As per Regulation 12(c) of the Regulations, a licensed book-maker means any person who carries on the business or vocation of or acts as book-maker or turf commission agent under a license or permit issued by any racing club or by the stewards thereof to enable him to carry on his business or vocation under the provisions of the Gambling Act, 1358 F., as specified in the license or permit. Regulation 16 is the charging section for the betting tax at 12.5% out of the monies paid or agreed to be paid by a backer to a licensed book-maker in respect of a bet. As per Regulation 18(2), all licensed book-makers shall keep accounts in such manner as may be prescribed, and when required in writing by any officer empowered by the Government, permit such officer or an officer authorised in writing by him in this behalf, to inspect and take copies of such account. Regulation 20 empowers to make Rules. Accordingly, Hyderabad Horse Racing and Betting Tax Rules, 1949 (for short “the Rules”) are framed.

5. Petitioner, one of the licensed book-makers at Hyderabad Racing Club, has filed monthly statements of tax due, during the years 1994-95 to 2000-01, along with tax demands thereon, with the Race Club and in turn they have filed consolidated statements of all book-makers before the Commercial Tax Officer, Malakpet Circle, Hyderabad.

6. The house of one of the partners of the petitioner-firm by name

Sri S. Ram Kumar Reddy was searched on 07.08.2000 and it is stated that certain registers, records, bank passbooks and loose slips relating to the business, were recovered. Based on such records, alleging that the petitioner-licensed book-maker has not disclosed some of the monies received, in the statements and thereby failed to maintain true and correct accounts, provisional show-cause notice dated 12.07.2001 vide CCT's JC (CT)/Enft/CTO-VI/51/1999-2000, HRBT, was issued determining balance tax payable at Rs.34,01,307/-. In the aforesaid notice, objections were called for, for the proposed levy. On receipt of the show-cause notice, this Writ Petition is filed.

7. It is the case of the petitioner that, in absence of any provision for assessment, proceedings are initiated to recover the tax from the petitioner; as per the Regulations, there is no authority or jurisdiction to search the premises of the book-maker; the Regulations and the Rules made thereunder empower entry into the Race Course, but there is no authority or jurisdiction either to search the residential premises of the book-maker or initiate proceedings for assessment, so as to demand further tax from the book-maker.

8. The Commercial Tax Officer, Enforcement, Office of the Joint Commissioner (CT), Enforcement has filed common counter-affidavit on behalf of the respondent. In the counter-affidavit, while denying the various allegations made by the petitioner, it is stated that petitioner is a licensed book-maker, who used to carry on business within the premises of Hyderabad Race Club and such other locations as may be permitted by the appropriate authority. It is averred that an anonymous complaint has been received by the respondent, specifically stating that the petitioner has suppressed total monies collected as bets and the petitioner was collecting the betting tax also from the backers and has illegally retained the amount. It is stated that, after obtaining necessary permission from the Deputy Commissioner, officials of the Enforcement Wing of Commercial Tax Department had approached the petitioner at his house and requested him to produce all his accounts; account books were available in the house of the petitioner and upon request, petitioner had immediately produced all the books available in his house; thereafter all the books were verified and compared with the returns filed by the petitioner and on the basis of comparison and verification of various books and bank passbooks, it was found that huge turnovers had been suppressed by the petitioner. In the counter-affidavit, it is

further stated that whenever amount is collected as a bet, 12.5% of such amount shall be deemed to have been collected as betting tax on behalf of the Government; in the present case, petitioner had collected the tax and suppressed the amounts as betting tax and is holding the same on behalf of the Government; inasmuch as such tax has not been remitted to the Government, petitioner is now called upon to show cause why the betting tax should not be quantified and collected from him. It is further stated that, in the circumstances, inspection of the accounts of the petitioner at his residence and the subsequent notice to remit the rightful dues of the Government would not be illegal and without jurisdiction. Stating thus, respondent prayed for dismissal of the Writ Petition.

9. Heard Sri S.R. Ashok, learned senior counsel assisted by Sri A. Ravinder Reddy, for the petitioner and the Special Government Pleader for Commercial Taxes (Telangana) for the respondent and perused the material on record.

10. It is contended by the learned counsel for the petitioner, that under the scheme of the Regulations and the Rules framed thereunder, respondent-authority is not empowered to make any assessment and as the matter relates to tax, unless specific power is conferred on the respondent-authority, it is not open to initiate any proceedings alleging that petitioner has suppressed true turnovers of betting. It is submitted that the very search conducted in the house of one of the partners of the petitioner-firm itself is illegal and arbitrary; in the absence of any such power of entry and search in the premises, the very search and recovery of documents is illegal.

11. On the other hand, it is submitted by the learned Special Government Pleader for Taxes (Telangana) that, as per the scheme of the Regulations and the Rules, petitioner, being licensed book-maker, is liable to maintain true and correct accounts and file returns disclosing entire turnover, but, in the instant case, as the turnovers are suppressed, a search is conducted in the house of one of the partners of the petitioner and on recovery of accounts books etc., impugned proceedings are initiated. It is submitted that, betting tax at 12.5% is to be paid to the Government, out of the monies paid or agreed to be paid by a backer and the when the petitioner, having collected money, has not paid tax as contemplated under the Regulations, respondent has authority to assess such

suppressed turnover to collect the balance tax payable by the petitioner. It is further submitted that as per the Hyderabad Horse Racing and betting Tax Regulation of 1358 Fasli, and the Rules made thereunder, respondent is empowered to make a search even at the place other than the Race Course.

12. Having heard the learned counsel for the parties, we have perused the Hyderabad Horse Racing and betting Tax Regulation of 1358 Fasli and the Rules made thereunder. The said Regulations govern collection of tax on horseracing and other forms of betting in connection therewith. The petitioner is a licensed book-maker, as defined under Regulation 12(c) of the Regulations. Regulation 16 clearly provides for payment of tax at 12.5% towards betting. As per Regulation 18(2) of the Regulations, all licensed book-makers shall keep the accounts as prescribed and officers permitted by the Government are also empowered to make inspection and take copies of such accounts. As per Regulation 19(2), all monies which a licensed book-maker is liable to make over to the prescribed officer under Section 17, shall be recovered from the licensed book-maker as public demand. Further, under Rule 31 of the Rules, within a week from the last day of each month in which a race meeting or race meetings are held, every licensed book-maker carrying on business at the race meeting shall forward to the Betting Tax Officer, through the manager of a race meeting or other authorised officer of the race meeting in Form E, setting forth the total amount of the monies paid or agreed to be paid by him in satisfaction of winning bets; and make over to the Betting Officer the amount of the tax due to the Government on such monies at the rate specified by the Government in Sections 13 and 16(1) of the Act. Under the Scheme of the Regulations and the Rules made thereunder, if any amounts are withheld by the licensed book-maker, or in the event of suppression of turnover, there is no provision for the assessment of tax recoverable from the book-maker. The Regulations provide that all the monies which a licensed book-maker is liable to make over to the prescribed officer under Section 17, shall be recovered from the licensed book-maker as public demand. But, such recovery can be made only for the demand of tax payable by the petitioner. But, in the absence of any provision for assessment and determination of tax payable by the petitioner-book-maker, respondent does not have any authority or jurisdiction to initiate proceedings for recovery of tax from the petitioner. As the levy pertains to betting tax, unless

there is specific and definite jurisdiction conferred on the respondent, it is not open to initiate such proceedings and make an assessment by issuing show-cause notice. Though the learned Government Pleader has made best efforts to convince this Court that the petitioner, having collected tax, is liable to pay tax to the Government, but, at the same time, he has not pointed out any Regulation or Rule which empowers such determination by the respondent, on the allegations of suppression of turnover or on the allegation of retention of tax monies collected by the petitioner book-maker illegally. In the absence of any such authority in the Regulations or the Rules, we are constrained to hold that the respondent is not having any jurisdiction or authority either to initiate proceedings or to pass any order assessing the tax payable by the petitioner on the allegation of suppressing the turnover or retention of tax collected by the petitioner-book-maker.

13. The learned counsel for the petitioner has relied on a judgment of a learned single Judge of this Court in **K. Babji Rao v. State of A.P.**, wherein this Court, while considering the power of the Entertainment Tax Officer under the provisions of Entertainment Tax Rules, to reopen previous returns, which have been accepted already and assess the tax for the past periods, held that in the absence of any provision for reopening previous assessments, which are already accepted, respondents cannot reopen such assessments. It is fairly well settled that tax laws, being fiscal statutes, must be construed strictly and, further, in view of the judgment referred above, we are of the considered view that in the absence of any provision to make a demand for payment of tax based on the suppressed turnover, respondent-authority is not empowered to initiate any proceedings either by issuing show-cause notice or proceed further.

14. At the same time, the submission made by the learned senior counsel for the petitioner, that power of inspection and search under the Regulation is confined only to the Race Course, is not convincing and acceptable. Under Regulation 9, any officer authorised by Government for the purpose may enter any race course while a race meeting is in progress, whether the provisions of this Chapter or of any rules made thereunder are being complied with. As per Regulation 18(2), it is obligatory on the part of the licensed book-maker to keep accounts in such a manner as may be prescribed and shall, when required in

writing by an officer empowered in this behalf by the Government, permit such officer, or an officer authorised in writing by him in this behalf, to inspect and take copies of such account. In view of the said Regulation, the officer authorised by the Government is empowered to inspect and take copies of such accounts or any other material from the place other than Race Course area also, when there are allegations of suppression of turnover or illegal retention of collected tax monies.

15. For the aforesaid reasons, while holding that there is power of inspection to the respondent-authority to inspect the premises of all the licensed book-makers, we are of the view that the respondent-authority is not having any authority or jurisdiction to proceed with the assessment proceedings for assessment on the allegation of suppressed turnover, under the scheme of the Hyderabad Horse Racing and betting Tax Regulation of 1358 F, and the Rules made thereunder.

16. Horseracing and certain other forms of betting in connection therewith is well known across the world. There is a phenomenal increase in the race-goers in India in the recent times. Though huge revenues of the Government towards horseracing and betting in connection therewith are involved, it appears, no serious thought is given to bring about a new legislation covering several aspects, to prevent leakage of revenue of the State. Even now, horseracing and other forms of betting connected therewith are governed by the Hyderabad Horse Racing and Betting Tax Regulation of 1358 F., framed by the erstwhile Hyderabad State in 1358 Fasli. Having regard to the same, it is high time that the State should give a serious thought to cover up the lacunae in the Regulations and, if necessary, bring about an appropriate new legislation to prevent leakage of revenue by way of tax in horseracing and betting.

17. The Writ Petitions are accordingly disposed of. No order as to costs. As a sequel, miscellaneous if any pending in the Writ Petitions stand closed.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

April 2015

MRR

Note: Copy be marked to:

1. Commissioner, Commercial Taxes
2. Secretary to Government (Legal Affairs)

B.O.